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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen;	)	CIVIL NO. CV03-00385 SOM-LEK
	)	(Copyright)
Plaintiff,	)	
	)	DECLARATION OF LEX R. SMITH
vs.	)	
	)	
HAWAIIAN EXPRESS SERVICE,	)	
INC., et al.,	)	
	)	
Defendants.	)	
	)	
	)	

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**DECLARATION OF LEX R. SMITH**

I, LEX R. SMITH, hereby declare as follows:

1. I am the attorney for the Defendants C&S LOGISTICS OF HAWAII, LLC, C&S WHOLESALE GROCERS, INC., C&S ACQUISITIONS LLC; ES3, LLC, and RICHARD COHEN ("C&S") and am licensed to practice in all of the state and federal courts in the State of Hawaii.

2. I have personal knowledge of the facts stated in this declaration and if called as a witness, I could and would testify to all matters set forth herein of my own knowledge.

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3. On March 23, 2006, I caused to be filed C&S' Motion for Attorney's Fees and Costs.

4. On March 28, 2006, I met with Plaintiff's counsel Timothy Hogan. The purpose of the meeting was to attempt to reach an agreement regarding Plaintiff's and C&S' respective motions for attorney's fees and costs.

5. The parties were unable to reach an agreement.

I declare under penalty of perjury under the laws of the State of Hawaii that the foregoing is true and correct.

Dated: April 6, 2006.

/s/ *Lex R. Smith*

LEX R. SMITH